

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

CHRISTOPHER D. MILLER,)	CASE NO. 5:06 CV 1158
)	
Petitioner,)	JUDGE PATRICIA A. GAUGHAN
)	
v.)	
)	<u>MEMORANDUM OF OPINION</u>
MICHELE EBERLIN,)	<u>AND ORDER</u>
)	
Respondent.)	

On May 9, 2006, petitioner pro se Christopher D. Miller filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Miller is incarcerated in an Ohio correctional institution, having been convicted of aggravated vehicular assault and "multiple misdemeanors," pursuant to a guilty plea, in November 2004. For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

As grounds for relief, petitioner asserts that his three year sentence violates the principles set forth in United States v.

Booker, 543 U.S. 220 (2005) and Blakely v. Washington, 542 U.S. 296 (2004). He further claims that the court should find "cause and prejudice" for his failure to file a timely and appropriate postconviction motion in the Ohio Court of Common Pleas, and apparently for his failure to appeal the denial of the postconviction motion he did file in April 2006.

Without the regard to the merits of Miller's assertions, it is evident on the face of the petition that he has yet to appeal his sentence, an avenue still available to him under Ohio Appellate Rule 5. His petition is thus premature.

Accordingly, pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the petition is denied and this case is dismissed without prejudice. The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

/s/ Patricia A. Gaughan
PATRICIA A. GAUGHAN
UNITED STATES DISTRICT JUDGE

Dated: 7/6/06